

Patent Application  
2771-624 (7497)

In the Office Action, the examiner has imposed a restriction requirement under 35 U.S.C. §121, between Group 1 Claims 1-49, directed to a web article and packaging, and Group 2 Claims 50-79 directed to a method of integrity testing a packaging article involving fabrication of the package.

In response to the restriction requirement, applicants hereby elect Group 1 Claims 1-49.

Such election is with traverse.

The traversal is based on the fact that the article and method claims are sufficiently closely related to merit their continued consolidation for search and examination purposes. The respective groups of claims are related and interdependent, and the stated basis for restriction is incorrect.

Specifically, the restriction has been premised on the position that the product as claimed can be made by a materially different "other" process, in which a first porous layer is formed, followed by peelably attaching a second non-porous layer to the first porous layer, followed by peeling the second layer back to enable air to enter through the first porous layer to the contents of the package.

The web article and packaging of the Group 1 claims requires a first layer of porous material, and a second layer overlying and sealed to the first layer, with the second layer comprising a peelable film in contact with the first layer of porous material and permitting peeling removal of the second layer from the first layer to expose the first layer of porous material for passage of gas therethrough.

The Group 2 method claims relate to integrity testing of a packaging article in which the packaging article includes a first layer of porous material permeable to gas and a second layer overlying and sealed to the first layer, in which the second layer is non-porous to passage of gas therethrough and comprises a peelable film in contact with the first layer of material, permitting peeling removal of the second layer from the first layer to expose the first layer porous material for passage of gas therethrough. The structure in both Group 1 and 2 claims is correspondent. Thus, the Group 1 and Group 2 claims are not independent and distinct as required for proper restriction, but rather are closely interrelated to one another.

In the Group 2 method, the packaging article is pressurized by compressed gas and monitored to determine integrity of the packaging article, following which the second layer is peelably removed from the first layer to expose the first layer for passage of gas therethrough, followed by exposure to gas for

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sterilizing the packaging article.

The examiner has posited a process in which the second layer is peeled back "to enable air to enter through the first porous layer to the contents of the package." However, it is to be noted that the pressurization of the packaging article and monitoring of pressure retention therein, to determine packaging article integrity, requires that the second layer, even if used in such fashion, would need to be re-secured to the first layer after pressurization, so that the second layer and first layer are sealed to permit integrity pressure testing. Thus, the "peel-back" alternative proposed by the examiner would in fact require re-securement of the first and second layers to enable pressure testing.

In sum, the hypothesized alternative fails to state a distinction justifying restriction between the respective claims. It therefore is respectfully urged that the restriction requirement be withdrawn, and that the Group 1 Claims and Group 2 Claims be examined and prosecuted together, as directed to related aspects of the unitary invention that is disclosed and claimed in the present application.

If it nonetheless remains the position of the examiner that the Group 1 Claims and Group 2 Claims must be restricted, then it is requested that the rejoinder provisions of MPEP §821.04 be effected, upon finding of allowable web article and packaging claims, so that the Group 2 claims 50-79 are rejoined to the elected Group 1 claims 1-49 in subsequent prosecution.

It therefore is requested that Examiner Bruenjes reconsider the Restriction Requirement on the foregoing grounds, and withdraw same in favor of unitary examination prosecution of all claims 1-79.

Respectfully submitted,



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